IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

Crl.Rev.Pet.No. 918 of 2004(D)

CRA.158/2003 of SESSIONS COURT, MANJERI
CC.456/2000 of JUDL.MAGISTRATE OF FIRST CLASS COURT, TIRUR

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REVN. PETITIONER: APPELLANTS/ACCUSED

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1. MURALI S/O. BALAKRISHNAN NAIR,
   KADANGAL HOUSE, KURUMBATHOOR AMSOM.

2. JAYAN S/O. BALAKRISHNAN NAIR,
   KADANGAL HOUSE, KURUMBATHOOR AMSOM.

3. BINDU D/O. BALAKRISHNAN NAIR,
   KADANGAL HOUSE, KURUMBATHOOR AMSOM,
   KALAPAKANCHERI.

BY ADV. SRI.T.KRISHNAN UNNI

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 26/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 918 OF 2004 D

Dated this the 26th day of September, 2007

O R D E R

The revision petitioners are two brothers and a sister. They were accused Nos.1 to 3 in C.C.No.456/00 on the file of the JFCM, Tirur. They were chargesheeted by the S.H.O., Kalpakanchery for offences punishable under sections 342 and 323 read with section 34 IPC.

2. The case of the prosecution can be summarized as follows:-

On 21.12.99 at about 9 a.m. PW2 and others were coming in a jeep through Manupady-Bavapady public road. When they reached near the Harijan colony road junction, the accused blocked the road and stopped the jeep. Thereafter, A1 and A2 together dragged their father PW2 from the jeep and tied his legs and hands with his dhothi. They then beat him with bare hands. PW2 was taken to their house. A1 to A3 tied him on a cot inside the bedroom and wrongfully confined him in the bedroom of the accused. The accused have thereby committed the aforesaid offences.

3. Consequent on the accused pleading not guilty to the

charge framed against them by the court below for the aforesaid offences the prosecution was permitted to adduce evidence in support of its case. The prosecution altogether examined 9 witnesses as PWs 1 to 9 and got marked 5 documents as Exts.P1 to P5 and two material objects as MOs 1 and 2.

4. After the close of the prosecution evidence the accused were questioned under section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against them in the evidence for the prosecution. They denied those circumstances and maintained their innocence.

5. The learned Magistrate after trial, as per judgment dated 31.3.03 found A1 to A3(revision petitioners herein) guilty of the offences. For the conviction under section 323 IPC, each of the accused was sentenced to undergo simple imprisonment for three months and for the conviction under section 342 IPC they were each sentenced to pay a fine of Rs.1,000/- and on default to pay the fine, to suffer simple imprisonment for one month.

6. Aggrieved by the conviction entered and the sentence passed against them, the revision petitioners preferred an appeal before the Sessions Court, Manjeri as Crl.Appeal No.158/03. As per judgment dated 25.2.04 the lower appellate court allowed the

appeal in part by confirming the conviction but modifying the sentence with regard to A3 by imposing a fine of Rs.1,500/- only on A3 for the conviction under section 323 IPC fixing a default sentence of imprisonment for one month for non-payment of fine. It is the said judgment which is assailed in this revision.

7. PW2, the injured, is none other than the father of the revision petitioners who are two brothers and a sister who were ranked as A1 to A3. Accused Nos.1 to 3 are the children born to the first wife of PW2. The name of the first wife of PW2 is Madhavi Amma. It is in evidence that during the subsistence of that marriage and during the life time of the said Madhavi Amma, PW2 contracted another marriage on account of which there existed enmity between the accused and PW2. According to the prosecution, on the date of occurrence, namely, 21.12.99 at 9 a.m. accused Nos.1 and 2 are allegedly to have intercepted the jeep belonging to PW2 driven by PW1 at a place called Kurumbathur and A1 and A2 are alleged to have dragged PW2 out of the jeep and while so the 3rd accused also came to the scene and all of them tied the legs of PW2 with the dhothi he was wearing and took him by force to their house situated nearby and while at the house, the accused persons confined PW2 to the bedroom and assaulted

him. The criminal law is said to have been set in motion by PW1 the driver of the jeep by informing to Kalpakanchery Police Station about the incident. The police are alleged to have rushed to the scene and liberated PW2.

8. The evidence of PW1 the driver of PW2 would go to show that while he was driving the jeep along with PWs 2 to 4 they reached a junction from where A1 and A2 blocked the jeep and PW2 was dragged out of the jeep and taken to the house of the accused after A3 tying both his hands and legs. PW1 claims to have proceeded to the police station straight from the scene of the first incident, namely, the road junction where the jeep was stopped and PW2 dragged out of the jeep. If this case of PW1 is believed, then his statement that PW2 was taken away by force by A1 and A2 and locked up in their house cannot be true since he would not have seen the latter part of the incident as he was proceeding straightaway from the road junction to the police station to report to the police as to what transpired at the road junction. PW1 was thus becoming more loyal than the King himself. After all, he is an employee of PW2 and he could not be expected to depose against his master. His statement that PW2 was locked up in the house of the accused is not one which he

had seen with his own eyes. So, much credence cannot be given to the statement of PW1 about the occurrence.

9. PW2, no doubt, is none other than the father of the accused. Ext.P2 wound certificate proved by PW5, the Doctor, would show that the injuries of PW2 were an abrasion of the right wrist and another abrasion on the elbow. The doctor himself has deposed before court that those abrasions could be caused if the respective portions of the body were to come into contact with a rough or hard surface. As stated earlier, PW2 was having strained relationship with the accused since the accused did not relish PW2 marrying again during the life time of PW2's first wife who is the mother of the accused. The evidence of DW1 the defence witness will go to show that in a mediation that took place PW2 demanded that his first wife Madhavi Amma(mother of the accused) was to give him properties and that she should agree for a divorce. PW2 was admittedly residing away from the place of occurrence along with his second wife. Since the accused had stood by their mother Madhavi Amma, PW2 naturally had extreme hostility towards the accused. Hence, his testimony has to be taken only with a pinch of salt.

10. Now coming to the evidence of PWs 3 and 4 who are

the other eye witnesses in the case, PW3 who is a 65 year old man, would say that he got into the jeep in which PW1 was travelling while returning from the temple after 'darshan'. But his case before the police was that he accompanied PW2 from the house of PW2. PW4 the other witness confessed that he was visiting the house of PW2 for no particular purpose. He claims to have travelled in the jeep along with PW2 but without knowing what his destination was. From the evidence of record, it is crystal clear that PWs 3 and 4 are close friends of PW2 were obliging him by rendering lip service to PW2.

11. The courts below did not take into account the extreme animosity which PW2 nurtured against the accused who were opposed to PW2 marrying again during the life time of their mother. The courts were mainly carried away by the fact that PW2 is none other than the father of the accused and the conviction recorded was mostly out of sympathy towards PW2, the father. PW2 unwittingly made a clean breast of himself by deposing that there was no provocation for the present occurrence. He would say that the accused had snatched away his properties. If this version of PW2 is true, then the motive, if at all, can only be for PW2 to falsely implicate the accused as has been done in this

case.

12. Considering the totality of the circumstances and the relationship between the parties and the alleged injuries on the body of PW2, I am of the view that the courts below did not appreciate the evidence in a proper perspective. Where the evidence has not been appreciated in the right perspective, if gives rise to an error of law justifying interference in revision.

13. After a careful consideration of the oral and documentary evidence in the case, I am satisfied that the prosecution has failed to bring home the guilt of the accused beyond reasonable doubt. The judgments impugned are accordingly set aside. The revision petitioners are thus found not guilty of the offences punishable under sections 323 and 342 IPC and are acquitted of the same. They shall be set at liberty forthwith.

In the result, this revision is allowed.

(V. RAMKUMAR, JUDGE)

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